

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN JUNE McCONER,

Petitioner,

CASE NO. 1:16-CV-1144

v.

HON. ROBERT J. JONKER

SHERRY BURT,

Respondent.

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ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 24) and Petitioner’s Objections to the Magistrate Judge’s Report and Recommendation and accompanying Affidavit (ECF Nos. 25, 26). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 Wright, Miller, & Marcus, Federal Practice and Procedure § 3070.2, at 381 (2 ed. 1997). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the

Report and Recommendation itself; and Petitioner's objections and affidavit. The Court finds the Magistrate Judge's Report and Recommendation (ECF No. 24) factually sound and legally correct.

The Magistrate Judge recommends denying Petitioner's habeas petition on its merits. In his Objections, Petitioner primarily reiterates and expands arguments he presented in his motion papers. The Report and Recommendation already carefully, thoroughly, and accurately addresses these arguments. Petitioner's Objections and Affidavit do not change the fundamental analysis. The Court agrees with the Magistrate Judge's conclusion that the habeas petition must be denied, for the very reasons the Report and Recommendation details.

Before Petitioner may appeal the Court's dismissal of his petition, a certificate of appealability must issue. 28 U.S.C. § 2253(c)(1)(B); FED. R. APP. P. 22(b)(1). The Federal Rules of Appellate Procedure extend to district judges the authority to issue certificates of appealability. FED. R. APP. P. 22(b); see also *Castro v. United States*, 310 F.3d 900, 901-02 (6th Cir. 2002). Thus the Court must either issue a certificate of appealability indicating which issues satisfy the required showing or provide reasons why such a certificate should not issue. 28 U.S.C. § 2253(c); FED. R. APP. P. 22(b)(1); *In re Certificates of Appealability*, 106 F.3d 1306, 1307 (6th Cir. 1997).

A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c). To make the required "substantial showing," the petitioner must demonstrate that "reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong." *Miller-El v. Cockrell*, 537 U.S. 322, 338 (quoting *Slack v. McDaniel*, 529 U.S. 473, 484 (2000)). The Court does not believe that reasonable jurists would find the Court's assessment of the claims Petitioner raised debatable or wrong.

ACCORDINGLY, IT IS ORDERED that the Report and Recommendation of the Magistrate Judge (ECF No. 24) is approved and adopted as the opinion of the Court.

IT IS FURTHER ORDERED that Petitioner's Petition for Writ of Habeas Corpus (ECF No. 1) is **DENIED**.

IT IS FURTHER ORDERED that Petitioner's request for a certificate of appealability is **DENIED**.

Dated: May 14, 2019

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE